United States Court of Appeals

for the Second Circuit

APPELLANT'S PETITION FOR REHEARING EN BANC

Docket No. 77-1062

77-1062

UNITED STATES OF AMERICA,

Defendant-Appellee,

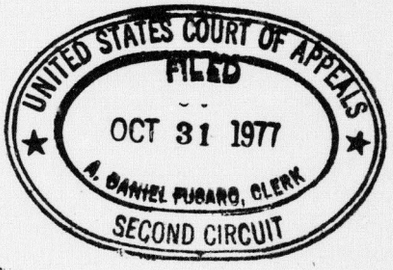
B

P/S

v.

GINO REDA,

Defendant-Appellant.



Appeal from the United States District Court
for the Southern District of New York

Pro-Se Petition for Rehearing En Banc
for appellant Gino Reda

Gino Reda
03824-158
Box 600
Eglin Air Force Base
Florida 32542

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Respondents.

v

GINO REDA,
Petitioner pro se.

OCT 31 1977

PETITION FOR REHEARING

EN BANC.

Docket No. 77-1062

DEPUTY CLERK OF THE COURT:

Dear Sir;

Comes now into Court GINO REDA, petitioner pro se., and brings about the following facts to wit:

On May 17, 1977, this Court affirmed petitioner's conviction in an oral opinion presented by counsel. Subsequently the petitioner pro se. applied for a rehearing and same was granted on August 22, 1977.

Petitioner submitted his brief for rehearing as requested by the Court of both parties. Following his brief, submitted a Motion for this Court to take cognizance of the Supreme Court decision of June 21, 1977, in the United States v Chadwick, as the Chadwick case resolved one of the major issues in this instant case and was ruling herein.

The Court prefers not to take any position with regard to the validity of the search and seizure herein, but rather rests its affirmation of the rehearing on the grounds that the Chadwick decision should not be used retroactive.

In the Governments brief for the rehearing they brought up the point of retroactivity as point 2 of the Governments arguement.

This Court takes its position of retroactivity based on the decisions previouslyheld by the Fifth Circuit in the U.S. v Montgemery, 558 F 2d 311(1977) and in U.S. v Peltier, 442 U.S. 531,535(1975), Mr. Justice Rehnquist pointed out

that where the retroactivity problem has been raised in exclusionary rule situations, the Court has determined that the new constitutional principal should be applied only prospectively. (emphasis added).

This Court goes on to cite additional cases cited by the Honorable justice (Blackman,J. dissent) in the Chadwick supra, 97 S.Ct. at 2488.

U.S. v Montgomery, supra, 558 F 2d ar 312;

U.S. v Frankberry, 358 F 2d 337, 339 (2d Cir. 1967) certiorari denied, 358 U.S. 862 (1966).

In addition to the retroactivity questi on this Court cites U.S. v Edwards, supra, 415 U.S. at 803 ("It is also plain that searches and seizures that could be made on the spot at the time of arrest may legally be conducted later when the accused arrives at the place of detention.") This being this Courts position for affirming on the original appeal prior to the Chadwick decision.

As pointed out in the Chadwick decision by the Supreme Court at page 14 of the slip decision. Footnote 10 --- Unlike searches of the person, U.S. v Robinson, 414 U.S. 218 (1973); U.S. v Edwards, 415 U.S. 800 (1974), searches of possessions within an arrestee's immediate control cannot be justified by any reduced expectations of privacy caused by the arrest. Respondent's privacy interests in the contents of the footlocker (as were petitioners in his case) was not eliminated simply because they were under arrest.

Petitioner points out to this Court that the cases cited in this Court's decision to uphold affirmation of thier previous decision against the re-hearing with regard to retroactivity definately DO NOT apply in this instant case. The point of retroactivity herein does not exist.

In order for a case to be retroactive it must have bearing on a case which has already passed. As stated in the denial of the instant case, the Court does not want to allow a decision made after the fact to change law

which was in effect and followed, before a Supreme Court decision to the contrary. In other words, the Court does not want to make the law of the land before a Supreme Court subject to the decision retroactively as this would do nothing more than allow guilty men who were treated fairly under the law of the land to be set free by a new ruling which stated a new precedent or in fact changed the law of the land after the fact or case in question. Wherefore most of the cases presented by the Government to show that retroactivity should not apply, were based on the Almeida-Sanches case. The Peltier case especially was used to sh ow that the Court should not allow a retroactive ruling in the instant case.

It is petitioner's contention that the instant case has nothing to do with any of the cases in question because there was no reversal at any point in Chadwick, where there was a reversal of the lower Court in the Shanches case. The Chadwick case was decided upon by all Courts in the same way since 1973. The lower Court used Constitutionla concepts in thier original decision and thier reasoning was upheld by the Supreme Court. The law of the land was related to Chadwick, never changed. The Constitution guarantees, what was found to be true in the Chadwick case was in fact true, and is true today. There was never a reversal in the Chadwick case from the District Court through the Appeals Court, and finally to the Supreme Court. The case was just a restatement of law which has existed since the inception of the Fourth Amendment of our Constitution. Chadwick did not make new law, it reaffirmed old law, law which the Government did not follow in the Chadwick case in 1973 or in the instant case in 1976. The instant case follows the District Court decision in the Chadwick case and is therefore at least a parallel case, not a case before the fact where retroactivity would have to be decided. The petitioner is not asking for retroactivity as all Chadwick represents is the law

that was and is in effect with no changes. Shanches was a case where the law of the land was reversed or changed by the Supreme Court, people then wanted to be protected by the new umbrella of the ruling, as in Peltier. We can understand where retroactivity would be an issue in cases which were heard prior to the reversal, however, all the petitioner is asking is that the Constitutional law as was affirmed in 1973 in the District Court, be applied in his case which was started in 1976. There is no retroactivity involved here, as there was no reversal or new ruling on existing law or procedure.

The Chadwick case presented before this Court by the petitioner as ruling in the instant case originated in May of 1973. The District Court in Chadwick supported the petitioners contentions and suppressed ALL the evidence as being violative of the safeguards of the Constitutional Fourth Amendment which have governed our law of the land since its origination, and that search and seizure termed illegal.

At that point, the Government again asked for reconsideration to reverse the long standing Constitutional laws, but the District Court reaffirmed, amplifying its original decision.

The Government then appealed to the First Circuit, and after hearing the Governments arguement, that Court affirmed the District Court decision, (U.S. Court of Appeals for the First Circuit - under # 75-1165).

The Government then applied to the Supreme Court for certiorari and once again the Supreme Court affirmed, making ALL avenues of remedy of the same nature, and holding firm that the law of our land, WAS, IS, AND ALWAYS WILL BE Constitutional law that has upheld this Country to date.

The petitioner herein has contended in ALL of his briefs and papers submitted for his appeal and rehearing this far, and still contends that the Chadwick decision firmly reviewed and affirmed what has been in effect ever

since our Country originated and that the laws that were instituted then, are, and will always be ruling.

Using this Courts contention as to the effect of the U.S. v Peltier on retroactivity, Mr. Justice Rehnquist pointed out that where retroactivity problems have been raised in exclusionary rule situations, the Court has determined that the new Constitutional principle should be applied only prospectively.

Retroactivity in this instant case cannot be revelant or considered at all because the Courts in deciding the Chadwick case DID NOT articulate a new doctrine or a new Constitutional principle;

Nor did these decisions create a sharp break in the Web of the law.

IN FACT, the issues and Constitutionality which were presented in Chadwick do not over rule the past precedented laws of our Constitution and of our land, but in fact, affirmed its proposed purpose and standard overall.

The petitioner herein has contended from the very start of his case in the District Court and up to this point, by virtue of simular and identical contentions and facts presented in all of his moving papers this far, exactly what the Chadwick decision has affirmed as being standardized and factual law of this Country ever since it was originated.

Our Constitution has upheld these laws and governed decisions therefrom for the past two hundred years.

Petitioner herein would direct the Court's attention to ALL of his submitted moving papers thus far, verifying these facts therein.

For all of the foregoing facts, the petitioner prays that this Court will take cognizance herein and grant his rehearing in Banc in the furtherence of justice

RESPECTFULLY SUBMITTED,

Gino Reda pro se.

OCTOBER 22, 1977

GINO REDA, petitioner pro se.
Box 600 Eglin Air Force Base
Florida 32542

Mailed copy of pet to U.S. atty 11-11-77

W Bozett